

Highlights of 2008 State Chaptered Legislation

The legislation noted below is a compendium of many, but not all of the legislation that may have an impact on financial institutions. Copies of these enrolled bills may be found at <http://www.leginfo.ca.gov/bilinfo.html>

AB 69 (Lieu), Chapter 277, Statutes of 2008. Mortgage Lending: Reporting.

This bill authorizes the Commissioner of Corporations to require finance lenders and brokers, residential mortgage lenders and residential mortgage loan servicers to provide reports concerning residential mortgage loan servicing activities and authorizes the commissioner to seek and receive information from residential mortgage loan servicers not subject to the commissioner's jurisdiction. The bill also requires the commissioner to post aggregated survey results on the Department of Corporations' internet web site, as specified.

AB 372 (Salas), Chapter 151, Statutes of 2008. Consumer Credit Reports: Security Freezes.

This bill requires that a request by a consumer to place a security freeze on his or her credit report be sent by mail (rather than certified mail) to a consumer credit reporting agency and requires the consumer credit reporting agency to place a security freeze within 3 business days after receiving a request from a consumer. In addition, this bill authorizes an agency to charge a fee of no more than \$10 to a consumer under 65 years of age and \$5 to a consumer 65 years of age or older for placing, temporarily lifting, or permanently removing a security freeze.

AB1301 (Gaines), Chapter 125, Statutes of 2008. Financial Institutions.

This Department of Financial Institutions (Department) sponsored bill revises and recasts provisions of law applicable to the location of bank offices and to the powers, prohibited practices and penalties applicable to banks. The bill also authorizes the commissioner to adopt and implement methods for electronic filings of applications, reports and other matters by such institutions; authorizes a bank, with the approval of the commissioner, to be formed to facilitate a merger or an acquisition of control; establishes specified loan and investment limitations for a bank to hold obligations made by a person and securities issued by that same person; relates to asset requirements for foreign banks; relates to bank examinations. This bill also makes it a crime for certain persons to engage in specified acts with a bank.

AB 2014 (Tran), Chapter 52, Statutes of 2008. Conservators and Guardians: Property in Foreign Jurisdictions.

This bill, in reference to the powers and duties of a guardian or conservator of the estate and in reference to the inventory and accounts of the guardianship or conservatorship estate, defines estate to mean all of the ward's or conservatee's personal property, wherever located, and real property located in this state. The

bill also requires a guardian or conservator to use ordinary care and diligence to determine whether the ward or conservatee owns property in a foreign jurisdiction and to preserve and protect that property. The bill requires a guardian or conservator who has knowledge of any real property of a conservatee or ward in a foreign jurisdiction to include in an accounting a schedule that identifies the real property, provides a good faith estimate of the fair market value of the real property, and state what action, if any, will or has been taken to preserve and protect the real property, including a recommendation whether an ancillary proceeding is necessary to preserve and protect the real property.

AB 2100 (Wolk), Chapter 481, Statutes of 2008. Elder Abuse: Reporting.

This bill requires the local ombudsperson and the local law enforcement agency to immediately report cases of known or suspected physical abuse (which includes sexual abuse) and financial abuse to the local district attorney's office in the county where the abuse occurred.

AB 2249 (Niello), Chapter 234, Statutes of 2008. Financial Institutions: Accounts.

This bill requires that when any police officer or sheriff's department or district attorney in this state certifies to a bank, credit union or savings association in this state or doing business in this state that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders, a county adult protective services office or a long-term care ombudsman, when investigating the financial abuse of an elder or dependent adult, may request and obtain certain account information of the elder or dependent adult. This bill also provides that when the Franchise Tax Board (FTB) certifies in writing to a financial institution that (1) a taxpayer filed a tax return that authorized a direct deposit refund with an incorrect financial institution account or routing number that resulted in all or a portion of the refund not being received, (2) the refund was not returned to the FTB, and (3) the refund was deposited into the account of an accountholder of the financial institution who was not entitled to receive the refund, the financial institution must furnish to the FTB the name and address of any co-owner, co-signer, or any other person who had access to the funds in the account following the date of direct deposit refund, or if the account has been closed, the name and address of the person who closed the account. This bill applies the FTB's collection authority for erroneous refunds to apply to misdirected refunds.

AB 2606 (Emmerson). Chapter 264, Statutes of 2008. Bad Check Diversion Program.

This law increases fees district attorneys may charge for bad check diversion programs. Processing fees increase from \$35 to \$50; and assessed bank fees from \$10 to \$15.

AB 2749 (Gaines). Chapter 501, Statutes of 2008. Financial Institutions: Disclosure and Reporting Requirements.

This Department-sponsored law revises and recasts disclosure and reporting requirements and provides that those requirements apply to all licensees regulated by the Department. Under specified circumstances, this law allows a foreign (other state or other nation) financial institutions regulatory agency to examine a licensee and any of its offices. This law also sets forth definitions relative to the rating of financial institutions pursuant to specified federally-established criteria. Additionally, this law authorizes a California state depository corporation to merge with a corporation or other business entity that is not a depository corporation if the California state depository corporation is the surviving corporation of that merger.

SB 31 (Simitian). Chapter 746, Statutes of 2008. Identification Documents.

This law provides that a person or entity that intentionally remotely reads or attempts to remotely read a person's identification document using radio frequency identification (RFID) without his or her knowledge and prior consent, as described, shall be punished by imprisonment in a county jail for up to one year, a fine of not more than \$1,500, or both that fine and imprisonment, except as specified. This law would also provide that a person or entity that knowingly discloses, or causes to be disclosed, specified operational system keys shall be punished by imprisonment in a county jail for up to one year, a fine of not more than \$1,500, or both that fine and imprisonment.

SB 1007 (Machado). Chapter 708, Statutes of 2008. Exchange Facilitators.

This law requires a person engaging in business as an exchange facilitator, as defined, to comply with certain bonding and insurance requirements, as specified, and to notify existing exchange clients whose relinquished or replacement property is located in this state of any change in control, as defined, of the exchange facilitator. This law also requires a person engaging in business as an exchange facilitator to, among other things, act as a custodian for all exchange funds and to invest those funds in investments that meet a prudent investor standard, as specified. This law prohibits these persons from performing specified acts, including, but not limited to, making material misrepresentations and engaging in conduct constituting fraudulent or dishonest dealings. This law makes any person who violates these provisions subject to civil suit in a court of competent jurisdiction and provides that a person claiming to have sustained damage because of a failure to comply with these provisions may file a claim on specified bonds, deposits, or letters of credit to recover the damages. These provisions remain in effect until January 1, 2014.

SB 1055 (Machado). Chapter 282, Statutes of 2008. Taxation: Cancellation of Indebtedness: Mortgage Debt Forgiveness.

This law provides conformity to federal income tax laws by conforming to specified provisions of the federal Mortgage Forgiveness Debt Relief Act of 2007, relating to the exclusion of the discharge of qualified principal residence

indebtedness, as defined, from a taxpayer's income if that debt is discharged after January 1, 2007, and before January 1, 2009, as provided. This law takes effect immediately as a tax levy.

SB 1065 (Correa). Chapter 283, Statutes of 2008. Home Financing Programs.

This law includes the refinancing of home mortgages in the criteria for establishing a maximum household income for the purposes of a city- or county-administered home financing program. This law also revises the definition of home mortgage for purposes of these provisions. These provisions remain in effect until January 1, 2012.

SB 1137 (Perata). Chapter 69, Statutes of 2008. Residential Mortgage Loans: Foreclosure Procedures.

This law, which became effective with the Governor's signature on July 8, 2008, requires a lender or servicer to contact a borrower, or satisfy due diligence requirements, 30 days before filing a notice of default (applies to loans made from January 1, 2003 to December 31, 2007, secured by owner-occupied residential real property), for the purpose of assessing the borrower's financial situation and exploring options for the borrower to avoid foreclosure. This law also requires that at the time a notice of sale is posted on the property to be sold, the lender or servicer mail a specified notice to the resident of a property subject to foreclosure sale (in English and 5 specified languages). Finally, it requires the legal owner to maintain vacant residential property purchased at a foreclosure sale or acquired through foreclosure and provides for civil fines of up to \$1,000 per day for failure to maintain the property. This law is repealed on January 1, 2013, unless a subsequent statute changes or repeals the sunset provision.

SB 1140 (Steinberg), Chapter 475, Statutes of 2008. Financial Abuse of Elder or Dependent Adults.

This law adds to the definition of financial abuse the taking, secreting, appropriating, obtaining, or retaining or assisting in the taking, secreting, appropriating, obtaining, or retaining, of real or personal property of an elder or dependent adult by undue influence, as defined. This law eliminates the requirement that specified standards regarding the imposition of punitive damages on an employer based upon the act of an employee be satisfied before compensatory damages and attorney's fees are awarded in a civil action for financial abuse. In addition, this law provides that if the elder or dependent adult, or his or her representative, demands the return of the property and it is not returned, the same remedies available when a defendant is liable for financial abuse shall be available. This law provides for a 4-year statute of limitations in which to commence a civil action for financial abuse of an elder or dependent adult.

SB 1264 (Harman), Chapter 174, Statutes of 2008. Wills and Trusts: No Contest Clauses.

This law, beginning January 1, 2010, revises, recasts and clarifies provisions of the Probate Code relating to no contest clauses in wills and trusts. Specifically, it limits the application of a no contest clause to specific contests; redefines “direct contest” and provides that a no contest clause may be enforced against a direct contest only when it is brought without probable cause, as defined; deletes the provisions regarding the authority of a beneficiary to apply to a court for a determination regarding a no contest clause, as described.

SB 1604 (Machado), Chapter 285, Statutes of 2008. Escrow Agents’ Fidelity Corporation.

Regarding persons engaged in business as escrow agents, licensed by the Department of Corporations, and required to be members of the Escrow Agents’ Fidelity Corporation (Fidelity) this law requires any private insurance coverage of a member that also covers a loss that would be covered by Fidelity, to be applied as primary coverage. This law allows a person whose certificate application has been denied or whose certificate has been revoked to file a reapplication for a certificate after a specified time, provided that person has met Fidelity’s requirements. Additionally, this law requires a licensee who engages an independent accountant or third-party contractor to reconcile trust account records to request that accountant or contractor to immediately notify the commissioner and Fidelity upon the occurrence of various events or discoveries. This law also requires that an agreement by a licensee with a financial institution to establish a trust account be accompanied by a letter from the licensee authorizing and requesting the financial institution to immediately notify the commissioner and Fidelity of account closure or the occurrence of an overdraft balance under specified circumstances.